85-769

Supreme Court, U.S.
FILED
SEP 16 1985
JOSEPH F. SPANIOL, JR.
CLERK

IN THE SUPREME COURT OF THE UNITED STATES

October Term, 1985

No. 85_____
[California 3 Crim. 13335]

EVERETT EUGENE ORUM.

Petitioner,

vs.

CALIFORNIA,

Respondent.

Petition for a Writ of Certiorari
to the Supreme Court of California

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57 pp

QUESTION PRESENTED

Must law enforcement searches of a parolee be supported by a warrant under the rationale of **Camara v. Municipal Court** 387 U.S. 523 (1967) and **See v. Seattle** 387 U.S. 541 (1967)?

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Petition

Petitioner respectfully requests that this honorable Court issue a writ of certiorari to the Supreme Court of California for the following reasons:

Parties

The parties hereto are EVERETT EUGENE ORUM, Petitioner, and THE PEOPLE OF THE STATE OF CALIFORNIA- Respondent.

Opinions Below

Petitioner, convicted of possessing amphetamine for sale, unlawful transportation of amphetamine, and possession of a weapon by an ex-convict- appealed his conviction to the Court of Appeal of the State of California for the Third Appellate District.

His conviction was affirmed by an unpublished opinion of May 2. 1985, set out in full as Appendix "A" hereto.

Thereafter, the District Court of Appeal denied petitioner's petition for rehearing. Appendix "B".

Thereafter, the Supreme Court of California denied a petition for review on July 16, 1985.

Jurisdictional Statement

Jurisdiction of this Court is conferred by virtue of the following:

1. The final judgment of the Supreme Court of California was entered on July 18, 1985;

2. The question presented here is a substantial Federal constitutional question, duly raised below;

3. Jurisdiction is statutorily

conferred by 18 USC 1257(3).

Constitutional Provisions

Petitioner relies on the Fourth Amendment to the Constitution of the United States which provides that "[t]he right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall issue, but upon probable cause, supported by Oath or affirmation, and particularly describing the place to be searched, and the person or things to be seized."

Statement of the Case and Facts

In California, parolees have a "reduced expectation of privacy", [**People v. Mason** 5 Cal. 3d 759, 764

97 Cal. Rptr. 302 (1971)], and are subject to search upon less-than-probable-cause simply by virtue of their parole status.

Pursuant to California's "Determinate Sentence Act", parole is not an act of grace, but is mandatory upon completion of a portion of a fixed penal sentence. Parole is not offered prior to this time, nor can a prisoner refuse to be paroled when parole is made available. Moreover, in California, parole extends for a short, fixed term of uniform length regardless of the commitment-offense. This term is a separate term. and not part of the underlying prison term. **In re Wilson** 30 Cal. 3d 438. 179 Cal. Rptr. 207 (1981).

Petitioner was released from prison in December. 1980 for an offense

unrelated to the present case, and was placed on parole.

At the time of his release, petitioner was informed of certain "conditions" which would attach to his parole. amongst them the condition that he submit to search and seizure by any parole agent or law enforcement officer with or without probable cause. The face of the form on which these conditions were printed contained a place for petitioner's signature. but he refused to sign the form or accept the conditions. Pursuant to the Determinate Sentence parole law, petitioner was released anyway.

On October 16, 1981, police acting on suspicion but without probable cause, searched appellant and his automobile. The police were acting on

a report that appellant had been involved in an armed assault on his in-laws. When appellant was stopped, the woman with appellant was found to possess a gun similar to that described by the assault victims. Although the officers had no real reason to believe that appellant possessed yet another gun, they searched his car trunk for such a weapon. They found narcotics.

The main justification for the trunk search was that appellant was on "searchable parole".

This fact had long been known to an officer McKee. the superior of the two officers who actually searched appellant's car trunk. McKee testified that he had secured advance permission from parole agent Frederick to search appellant, but Frederick denied this at

the hearing. In any case, McKee did not arrive at the search scene until the search had already occurred.

Petitioner's parole agent, Robinson, also testified. Robinson related that he had spoken with sheriffs about the assault case on the afternoon prior to petitioner's arrest. However, all the other evidence showed that the assault occurred around midnight and petitioner was arrested a few hours later. In any event, neither of the officers had been given permission for the search by Robinson. Robinson had not seen petitioner in a while and was not aware of any particular problems with petitioner's adjustment.

Petitioner made bail on the narcotics and assault charges growing

out of this arrest. However, he was rearrested after a search conducted on May 13, 1982. There, McKee relied on a confidential informant who told him of drug-dealing by petitioner. Rather than get a warrant. McKee decided to conduct a "parole search" with parole agents. The premises were searched and drugs were found in a parked station wagon to which appellant had the keys.

Based on the seizures made during the October. 1981 and May. 1982 cases, petitioner was convicted of drug possession by his guilty plea.

ARGUMENT

THE PAROLE AUTHORITY IS AN ADMINISTATIVE AGENCY AND PAROLE SEARCHES REQUIRE A CAMARA-SEE WARRANT.

Introduction

Herein, petitioner argues that

recent decisional, statutory, and worldly changes have transformed California's parole agency from a quasi-judicial extension of the prison system into an independent administrative agency. Petitioner accordingly submits that the rationale of **Camara v. Municipal Court, supra,** 387 U.S. 523 applies to searches carried on by parole agencies or by peace officers acting pursuant to parole-search conditions.

This case is argued with reference to a "California-specific" decisional background. However, the concerns of this petition extend to all jurisdictions which have adopted a "modern" penological approach. and specifically to the increasing number of jurisdictions which sentence prisoners to

determinate sentences.

The Background

Currently. California Courts hold that a parolee has a reduced expectation of privacy, and may be searched as a condition of his parole without warrant or probable cause. **In re Martinez** 1 Cal. 3d 641, 83 Cal. Rptr. 682 (1970).

Several justifications have been offered for this doctrine. The leading justifications are that (1) a parolee "consents" to search conditions. [e.g., **Hernandez v. Superior Court** 110 Cal. App. 3d 355. 366, 185 Cal. Rptr. 127 (1980)]; (2) parolees remain in "constructive custody" subject to appropriate restrictions, [**People v. Hernandez** 229 Cal. App. 3d 143. 150. 40

Cal. Rptr. 100, cert. den., 381 U.S. 953 (1964)]; and (3) parole-searches are necessary to the parole process, [**People v. Britton** 156 Cal. App. 3d 689, 696, modif., 157 Cal. App. 3d 1228c, 1228d. ___Cal. Rptr.___(1984).

Each of these justifications is based on a conception of parole as a quasi-judicial process. Penal and parole were both set by the Adult Authority, [**People v. Superior Court (Syvinski)** 2 Cal. 3d 527. 533. 86 Cal. Rptr. 83 (1970), and a violation of parole put the parolee in his original position of serving a full term (usually life) without a set release date.

Parole was also paternalistic. Here is Mr. Justice Fox in **People v. Denne** 141 Cal. App. 3d 499, 503, 297

P.2d 451 (1956), the first and "classic" parole-search case:

> "[T]he process of rehabilitation takes place under the vigilant and tutelary eye of the parole officer .... [S]ince a breach of faith reposed in [the parolee] may subject him to summary return to the prison confines. the parole officer is accorded broad visitatorial powers over his prisoner .... By accepting the privilege of a parole. a prisoner consents to the broad supervisory and visitatorial powers which his parole officer must exercise over his person and property until the term of his sentence shall have expired or terminated."

Basically, a "prisoner outside the walls". a parolee was given the same rights as a prisoner. Mr. Denne, for example. was not permitted to marry, engage in business, or execute a contract. and had to get permission to rent an apartment, purchase food, hold a job, or obtain Workman's Compensation

or Social Security. **Denne, supra,** 141 Cal. App. 3d at 503.

The only "choice" given to a parolee under the old system was consent to parole itself. Without consent. an inmate could not be paroled against his will. E.g., **In re Peterson** 14 Cal. 2d 82, 84-85, 92 P.2d 890 (1939).

Recently. California and a number of other jurisdictions, including the Federal Courts. have abandoned (or are abandoning) the traditional concept of parole in favor of a more modern version of parole supervision. Under the new regime, parole is mandatory and not consensual. It is not a reward for "good behavior", but is granted to an inmate whether he is ready for release

or not. **See**, gen., **Cal. Penal Code §§** 3000 et. seq..

The change in the sentencing law has been accompanied by a change in the law with regard to the civil rights of prisoners. A review of these changes is not necessary. Suffice it to say that prisoners have gained entitlement to new substantive and procedural rights over the course of two decades.

Also, the "rehabilitative" mission of parole agencies has been limited by budgetary restrictions which have been imposed in recent years.

Thus, the concept of parole, itself, has changed; instead of the "vigilant and tutelary eye of the parole officer", petitioner was supervised by an agent who maintained only attenuated contact. and was unaware of

petitioner's potentially serious problems with law-enforcement.

Petitioner submits that the mission of parole agencies, especially agencies functioning under determinate sentence laws, has changed. The agencies have become those common, useful beasts of burden: administrative agencies. Such agencies have clients, duties, and limits. The parole agency is no longer warden over a metaphorical prison without walls. The parole agencies' clients are, rather, a class of ex-prisoners who are no longer "granted" parole but have parole imposed upon them by virtue of the passage of time. The duty of the "new" parole agency is to periodically inspect the lives of its clients to be

sure that no violations against a set of standards have occurred; however, because most paternalistic restrictions have been lifted, such standards now largely deal with prohibitions against criminal behavior rather than with how a parolee reorients his life towards some affirmative notion of goodness.

It is true that the aim of parole is still rehabilitative, [**see, P.C. § 3000, supra,**], but this is true of most administrative agencies, for example welfare and social security agencies.

Camara Requires
Warrants for Parole-Searches

This Court held in **Camara v. Municipal Court, supra,** 387 U.S. 523, 529-530, 534-538, that administrative searches, even if carried on for public safety purposes require some sort of

warrant. Accomodation, if any, to the regulatory needs of the agency must come from the level of cause required for the warrant, rather than by dispensing with the warrant requirement itself.

The **Camara** line of reasoning was extended to parole searches by **United States v. Bradley** 571 F.2d 787, 789 (4 Cir.. 1978); **see, also. United States v. Workman** 585 F.2d 1205 (4 Cir., 1978)(probation); **Diaz v. Ward** 506 F.Supp. 226, 227 (S.D.N.Y., 1980); **State v. Cullison** 173 N.W.2d 938, cert. den., 398 U.S. 938 (1970); **People v. Easton** 8 Ill. App. 3d 512. 519-520. 289 N.E.2d 673 (1972).

As with **Camara,** the **Bradley** Court conceded the "important governmental interests at stake," [**Bradley** 571 F.2d

at 790], but reasoned that these merely "diminish ... the rigorousness of the standard of cause which the parole officer must satisfy to obtain a warrant, not of removing the judicial protection which the warrant requirement interposes." **Bradley** 571 F.2d at 790. Explaining its position in a later case, the Court noted that extending the warrant requirement to parole searches would cause no more "potential for injury or benefit as its application in other criminal procedure." **United States v. Workman, supra,** 585 F.2d at 1210.

Not all the Circuits have followed **Bradley.** However, rejection of a warrant requirement by the Ninth Circuit, [**Latta v. Fitzharris** 521 F.2d 246 (9 Cir.. 1975)] was based largely

on the outmoded notions about parole. "The overriding goal of the parole system is to give the parolee a chance to further and to demonstrate his rehabilitation while serving a part of his sentence outside the prison walls .... The parole officer ought to know more about the parolee than anyone else but his family .... The principle protection against abuse of this authority [to search] is the "helping" function of the parole officer's job ...." **Latta** 521 F.2d at 249-250.

Latta went on to draw an analogy to the "statutorily regulated industries" exception to the **Camara** warrant requirement.[1/] The analogy is

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1. **See**, e.g., **Donovan v. Dewey** 452 U.S. 594 (1981)(mines); **United States v. Biswell** 406 U.S. 311 (1972) (firearms); **Collonade Catering Corporation v. United States** 297 U.S. 72 (1970)(liquor).

inapposite, however, because the "exception" only applies to consensually regulated industries, [e.g., **Almeida-Sanchez v. United States** 413 U.S. 266, 271 (1973)], while parole release is no longer conditioned on consent and petitioner here did not consent to search conditions.

In short, the realities of today's parole system militate against exempting parole authorities from the warrant requirements imposed on them by **Camara** and **See.**

Nor should they be exempted. Numerous problems are fostered by the current, warrantless parole scheme.

In California, for example, the paucity of parole-search litigation has produced nebulous and varying standards

with regard to what search-and-seizure rights parolees do have. Some cases have hald that a parolee must have done something indicative of criminal activity, [e.g., **People v. Guerrero** 85 Cal. App. 3d 572. 149 Cal. Rptr. 555 (1979)], while others allow officers to act even without suspicion. **People v. Howard** 79 Cal. App. 3d 46, 49, 143 Cal. Rptr. 342 (1978). So long as there is no uniformity, standards will be set on an ad-hoc basis by searching officers themselves. A warrant requirement, which would produce a common-law of uniform search standards, would alleviate this problem. **See, Latta v. Fitzharris, supra,** 521 F.2d at 435,

Rufstadler, J., dissenting.[2/]

To these "negative" benefits are added some "positive" ones.

The precision required of officers filling out a warrant application would clarify search aims. Warrants would forestall most courtroom challenges to seizures. **See, gen., United States v. Leon** 468 U.S.___(1984). Finally, a warrant procedure would repose search authorization in the hands of neutral magistrates which are a part of the same system which will impose criminal

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2. Then, too, the current standardless system encourages parolees to "gamble" with criminality because the eventuality of a search is too capricious to be planned either for or against. It discourages communication between parolee and parole agent because a search may result. Finally, a slapdash system discourages respect amongst parolees,--amongst the most legally sophisticated of citizens,--for the law.

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sanctions based on the fruits of the search. To place "under one roof" all aspects of the search-charging-sentencing process will restore much of the coherence lost when the old parole system was hacked up to make way for the Determinate Sentence system.

None of this will interfere with the residual "rehabilitative" functions of parole, itself. Unlawfully seized evidence will still be admissible at parole revocation hearings, and a warrant requirement will thus not impede the revocation process. More generally, **Camara** and **See** do not apply to such activities as home-visitation, [cf., **Wyman v. James** 400 U.S. 309 (1971)], during which visits agents could ascertain facts which might later

ad them to seek a warrant. Nothing
a warrant requirement would prevent
role officers from conveying their
spicions about a parolee to police.
r would a parole agent be prevented
om arresting his parolee as an
sconder or for other non-search-based
arole violations.

Parolees, even under the "new"
arole regime are subjected to greater
crutiny than are ordinary citizens.
eir crimes, no less conspicuous than
e crimes of others, will not go
ndetected if a warrant is required.
l that will va if a warrant is
equired is the potential for police
use based on the mere parole status
a man who has served his time.

Such an abuse occurred here.
ithout exigency. police on one

ccasion invaded the trunk of etitioner's car and on another ccasion invaded his home. On the irst occasion. the officers had other ause to arrest petitioner and the earch was gratuitous. On the second ccasion, the officers had plenty of ime to obtain a warrant before they taged their raid on petitioner's remises.

These sorts of constitutional iolations are enjoined by **Camara, See,** nd progency. This Court should grant his petition in order to clarify the aw in this regard, to resolve the onflict between the circuits. and to nsure that petitioner's constitutional

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ghts are vindicated.

DATED: September 16, 1985

Respectfully Submitted:

_____

DONALD THOMAS BERGERSON,
Attorney for Petitioner,
EVERETT EUGENE ORUM

APPENDIX "A"

Opinion Below

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA, THE THIRD APPELLATE DISTRICT

(SACRAMENTO)

Not to be Published

3 Crim. 13335

THE PEOPLE, Plaintiff and Respondent,

vs.

EVERETT EUGENE ORUM, Defendant and Appellant.

Following a search of his automobile and person on October 17, 1981, an information was filed charging defendant with the unlawful possession of a hnadgun

by one previously convicted of a felony (Pen. Code, § 12021 - count I), two counts of assault with a deadly weapon (Pen. Code, § 245 subd. (a) - counts II & III), possession of amphetamine for sale (Health & Saf. Code, § 11378 - count IV), and with the unlawful transportation of methamphetamine (Health & Saf. Code, § 11379 - count V). Three prior convictions were also alleged (Pen. Code, § 667.5, subd. (b)).

Before these charges were resolved a second search conducted at defendant's residence on May 13, 1982, resulted in the filing of a second information charging defendant with possession of amphetamine for sale (Health & Saf. Code, § 11378).

Following the granting of the

People's motion to consolidate the informations and the denial of defendant's motion to suppress evidence (Pen. Code, § 1538.5), defendant entered a negotiated plea to being an ex-felon in possession of a handgun, to the unlawful transportation of methamphetamine, and to possession of amphetamine for sale. He also admitted two of the three alleged priors.

Sentenced to state prison, defendant appeals contending: (1) none of the searches can be sustained under the parole search doctrine; and (2) the accelerated booking search was unlawful. We reject these contentions and shall affirm the judgment.

FACTS

On October 16, 1981, at

approximately 11 p.m., Deputies William Myers and Terry Moore responded to the residence of Dale Martin. There they were told by Martin that defendant had struck Martin's wife on the head with a .357 caliber revolver while in a local bar. Martin described defendant to the deputies and told them he drove a yellow M.G. and that he frequented the Ivanhoe and Country Squire bars. Martin's brother told Deputy Myers that defendant had served time in prison for possession of heroin and stolen guns and that he had heard defendant was presently dealing in drugs.

Failing to locate defendant at the two bars, the deputies radioed for additional information from their records

section. Lieutenant Easton, who overheard the request, met with the deputies in the field. and informed them defendant had served five years for a drug conviction, that his prior conviction resulted from dealing drugs from the trunk of his car, that he was known to carry a weapon in his waistband, and that he should be on searchable parole.

Around 2 a.m., the deputies saw defendant's M.G. at the Ivanhoe bar. Defendant and a female, later identified as Sally DeLouize, exited the bar and entered a stationwagon parked behind the M.G. Defendant got out of the station-wagon, went to the M.G., and made a motion as though he were removing something from his waistband and placed

it in the M.G. He was then joined by DeLouize in the M.G. After she momentarily returned to the stationwagon, the two drove off in the M.G. with the deputies following.

The deputies stopped the M.G. and conducted a pat down search of defendant but no weapon was found. Defendant and DeLouize were each placed in the back of separate patrol cars. DeLouize gave Deputy Myers permission to obtain her identification from her purse in the car. Inside the purse Myers found a .38 revolver, but he did not believe this to be the weapon used in the assault. Deputy Myers told defendant he was aware that defendant was on searchable parole, which defendant confirmed but refused to give

his consent to a search of the car.

Based upon his belief that the weapon used in the assault was still missing and due to the information that defendant was dealing drugs from his car, Deputy Myers searched the M.G. In the trunk he found an ice chest and a black box, each being large enough to contain a gun. Inside the ice chest he found contraband. A search of defendant revealed $260 cash, a small green vial, and a small spoon on a chain.

In early May 1982, Deputy Richard McKee received information that defendant was again dealing in methamphetamine and that he was using an older stationwagon to get the drugs. When McKee gave this informationto Agent William Frederick of the Department of Corrections, the latter

verified defendant's parole status and requested McKee to assist him in a parole search of defendant's residence.

Prior to the search, which was conducted on May 13, depurty McKee had on both May 7 and 10 observed a red stationwagon parked in the driveway. At the time of the search the red stationwagon was parked in front of the residence.

Although a search of the residence disclosed no contraband, a set of keys were discovered in a bedroom used by defendant. When defendant was asked for the keys to the red stationwagon he denied any knowledge about the vehicle other than a Mr. Burdall had left it there the previous night. Agent

Frederick discovered that one of the keys fit the red stationwagon, opened it and found drugs beneath the driver's seat.

DISCUSSION

Defendant first contends the roadside search of his person and M.G. on October 17 was unlawful because (1) it was not conducted by his parole agent and the record is unclear as to what his conditions of parole were; and (2) there was insufficient reason to conduct the search even under the theory of a parole search.

Initially we note the well established rule governing motions to suppress evidence under Penal Code section 1538.5: "In such a proceeding the power to judge the credibility of the witness, resolve any conflicts in the

testimony, weigh the evidence and draw factual inferences, is vested in the trial court. On appeal all presumptions favor the exercise of that power and the trial court's findings on such matters, whether express or implied, must be upheld if they are supported by substantial evidence." (People v. Lawler (1973) 9 Cal. 3d 156, 160). Moreover, where a parolee is subject to search conditions, a parole search may be founded on ""any report or suspicion or belief of continued misconduct" reasonably suggestive of criminal activity and is legal as long as the search is not for the purpose of harassment." (Hernandez v. Superior Court (1980) 110 Cal. App. 3d 355, 366.)

Here, defendant admitted to the officers tha he was on searchable parole. Defendant's notice of parole containing the conditions of parole was introduced into evidence at the suppression hearing. Under the terms of his parole, defendant and his "residence and any property under [his] control may be searched without a warrant at any time by any agent of the Department of Corrections or any law enforcement officer." (See Cal. Admin. Code. tit. 15, § 2511, subd. (b) 4.)

Relying on People v. Coffman (1969) 2 Cal. App. 3d 681. Hernandez v. Superior Court, supra, 110 Cal. App. 3d 355, and People v. Natale (1978) 77 Cal. App. 3d 568, defendant argues that none of the searches can be upheld under the parole search doctrine because they were mere

pretexts for police activity unrelated to parole supervision. Natale held that when the conditions of parole do not include a search by any law enforcement officer, the parole officer may not act merely as a "stalking horse" for the police. (77 Cal. App. 3d at p. 573-574). Since defendant's parole conditions included a condition of seach by any law enforcement officer, there is no requirement that the search be conducted by defendant's parole officer. "The purpose of the search, not the physical presence of a parole agent, is the vital element." (People v. Coffman, supra, 2 Cal. App. 3d at p. 688). Coffman condemened a search conducted by a parole agent acting solely as a "front" for the

police. But as we later noted, "Coffman is inapposite to a situation where the parolee has agreed to a search by "any law enforcement officer."" (Hernandez v. Sueprior Court. supra. 110 Cal. App. 3d at p. 366.) Defendant retorts that he did not consent to a search by any law enforcement officers. That, as it turns out, is irrelevant. Parole conditions "are not a contract but are the specific rules governing all parolees whether or not the parolee has signed the form containing the parole conditions." (Cal. Admin. Code, tit. 15, § 2512.) As we shall explain, consent to a parole search condition is not a necessary predicate for a valid parole search. The doctrinal foundations of warrantless parole searches were recently reexamined

in light of the enactment of the Determinate Sentencing Act (Stas. 1977, ch. 1139), and were found to have continuing validity under the theories of constructive custody and the legitimate demands of the parole process. (People v. Britton (1984) 156 Cal. App. 3d 689, 693-697, mod. 157 Cal. App. 3d 1228c.) Whether or not the consent theory is still viable, "another theory of justifying warrantless parole searches--administrative needs of the parole process--retains its validity." (Id., at p. 696.) The searches in this case were reasonable ones justified by the legitimate demands of the parole process. Since the officers had been informed that defendant had committed a felony assault

with a gun, and because they were unable to find he gun on defendant's person or in the interior of his car, and because they had also been told that defendant's prior conviction was drug related and that he was presently dealing in drugs, it cannot reasonably be contended that the search of the trunk was made either for the purpose of harassment or without sufficient cause.

Relying on People v. Laiwa (1983) 34 Cal. 3d 711, defendant also urges that the vial containing amphetamine found on his person following his arrest must be suppressed as it was the result of a prohibited "accelerated booking search." The claim is founded upon the following testimony of Officer Myers given in response to questions by the prosecutor:

"Q. Did you do a prebooking search at that time? A. Yes. Q. What did yo find, if anything? A. A large amount of cash, two hundred sixty some odd dollars, I believe was on his person, and a small green vial with a black lid . . . ."

In Laiwa the arresting officer testified that at the site of the arrest he searched defnedant's tote bag "for inventory purposes." (Id. at p. 715.) The Court held that searches at the scene of the arrest made for inventory or jail safety purposes, which it termed "accelerated booking searches" or "booking searches", were unconstitutional. (Id., at pp. 724-728.) While it is true Deputy Myers responded affirmatively when asked if he did a "prebooking search" the

use of the term "prebooking search" does not in-and-of-itself mean that he was conducting a search for inventory or jail safety purposes. Unlike the officer in Laiwa, Deputy Myers never expressly testified as to his purpose when he searched defendant; nor was he ever asked. Simply stated the term "prebooking search" does not necessarily mean anything other than a search which preceeded the booking of the defendant. Indeed, given that he had just found drugs in the trunk of defendant's car it is obvious that officer Myers was searching defendant for additional evidence--a purpose specifically approved in Laiwa. (Id., at p. 727).

Defendant also contends the officers impermissibly extended the scope of an

otherwise proper search on May 13 by searching the stationwagon in front of his residence. This is so, he argues, because the red stationwagon turned out to belong to Ted Berdahl, who was not a cotenant," and defendant had so informed the officers prior to the search. Ownership of the car was not the critical point upon which the validity of the search turned. The point was wehtehr or not the officers had sufficient reason to believe defendant was in "possession" of the vehicle. (Hernandez v. Superior Court. supra, 110 Cal. App., 3d at p. 367.) Deputy McKee's testimony that he had seen the vehicle in defendant's driveway on May 7 and 10, and that it was present on May 13 with defendant in

possession of the car keys was sufficient evidence to establish defendant's possession of the vehicle.

Defendant contends that due to the enactment of the Determinate Sentencing Act parole searches require an administrative warrant. The basis for this extravagent claim is is assertion that the doctrine of custodia legis no longer applies and that the "Department [of Corrections] and its Board have become [] that common and useful beast of burden: an adminstrative agency."

Defendant's argument is as follows: Prior to the enactment of the Determinate Sentence Act a parolee was serving the remainder of his sentence outside of prison. After the Determinate Sentence Act became effective parole was no longer

a matter of clemency but was imposed as a separate term. "It is thus incorrect to say that the parolee is serving the balance of his prison time "outside the walls"." Therefore, so the argument goes, the defendant was not in custodia legis of the Department of Corrections at the time of the searches.

While it is true that the parole period now imposed constitutes a term separate from the original imprisonment (In re Wilson (1981) 30 Cal. 3d 438, 442), it is also still true under the Determinate Sentence Act that "an inmate is not "discharged from custody" until "his successful completion of parole ...."" In re Caudillo (1980) 26 Cal. 3d 623, 636, citing Penal Code section 3000,

subdivision (a)). Further, Penal Code section 3056 states: "Prisoners on parole shall remain under the legal custody of the department and shall be subject at any time to be taken back within the inclosure of the prison." In the face of such authority, defendant's contention that the doctrine of custodia legis is no longer viable must be rejected.

In support of his claim that the Department of Corrections is an administrative agency, therefore requiring an administrative warrant for the search of its parolees, defendant relies on Camara v. Municiapl Court (1967) 387 U.S. 523 [18 L.Ed.2d 930, and See v. Seattle (1967) 387 U.S. 541 [18 L.Ed.2d 943]. Camara prohibited

warrantless searches of residences by a governmental agency charged with enforcement of housing code resrictions. See prohibited warrantless searches of businesses for fire safety violations by the Seattle Fire Department. Neither case is on point since the respective defendants in those cases were not parolees subject to reduced expectations of privacy. This same contention was rejected by the Britton court: "The frustration of the purpose of requiring public health inspectors to obtain warrants before searching private residences does not come close to the frustration of purpose which would occur if when performing their duties parole officers were required to obtain search

warrants before searching a parolee's residence. The legitimate demands of the parole process (discovery of parole violations, supervision of the parolee, checking the parolee's progress toward rehabilitation and protection of the public can best be met by allowing a parole officer to conduct a reasonable parole search without the need of obtaining a warrant." (People v. Britton. supra, 156 Cal. App. 3d 696, mod. 157 Cal. App. 3d 1228c, 1228d.)

What is on point is Penal Code section 3000, enacted as part of the Determinate Sentence Act, which provides in part: "The Legislature finds and declares that the period immediately following incarceration is critical to successfl reintegration of the offender

into society and to positive citizenship. It is in the interest of public safety for the state to provide for the supervision of and surveillance of parolees and to provide educational, vocational, family and personal counselling necessary to assist parolees in the transition between imprisonment and discharge." As the Britton court noted, a necessary condition for the carrying out of this mandate is the warrantless parole search.

The judgment is affirmed.

SPARKS, J. We concur: EVANS. Acting P.J., RYAN, J*

APPENDIX "B"

COURT OF APPEAL OF CALIFORNIA

THIRD APPELLATE DISTRICT

Petition for Rehearing Denied. DATED:
ay 31. 1985.

APPENDIX "C"

N THE SUPREME COURT OF THE STATE OF
ALIFORNIA; 3 Crim. 13335. Petition
or Review Denied. DATED: July 18,
985. Bird, C.J.